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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,657	02/19/2002	Yoshiaki Yokoo	159-71	2579

23117 7590 01/28/2005

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EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/076,657	YOKOO ET AL.	
	Examiner	Art Unit	
	Drew E Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 September 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 4-14* is/are pending in the application.

4a) Of the above claim(s) *12 and 13* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-11 and 14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *9/8/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims 12-13 drawn to an invention nonelected without traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Applicant argues that there were no reasons on record for the separation of claims 12-13. However, applicant is invited to review the election of species delineated in the restriction of January 14, 2004 as well as applicant's response of February 4, 2004 which chose to elect the species of claims 9-11. This election was made without traverse.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen et al [Pat. No. 5,756,141].

Chen et al teach a processed mango juice having substantially no pulp (column 7, lines 33-60; claim 3), mango puree (column 5, line 45), a beverage made from mango juice and water (column 5, line 26), inherently preventing sedimentation due to the lack of pulp, providing lowered viscosity and excellent flavor (column 4, lines 58-65), the use of

5-35% aloe vera (column 13, line 20), an alcoholic drink (column 11, line 67). Phrases such as "by centrifugal separation" are merely preferred methods of making the claimed product. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al as applied above, in view of XP-002201947.

Chen et al teach the above mentioned components. Chen et al do not recite fruit wine. XP-002201947 teaches a fruit wine made from mango juice (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the fruit wine of XP-002201947 into the invention of Chen et al since both are directed to mango juice

beverages, since Chen et al already included alcoholic drinks (column 11, line 67), and since mango wine was commonly known as shown by XP-002201947.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al as applied above, in view of DE 20102826U1.

Chen et al teach the above mentioned components. Chen et al do not recite liqueur. DE 20102826U1 teaches a liqueur made from mango juice (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the liqueur of DE 20102826U1 into the invention of Chen et al since both are directed to mango juice beverages, since Chen et al already included alcoholic drinks (column 11, line 67), and since mango liqueur was commonly known as shown by DE 20102826U1.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al as applied above, in view of Wu et al [Pat. No. 5,468,508].

Chen et al teach the above mentioned components. Chen et al do not recite a transparent container. Wu et al teach a mango juice in a glass bottle (column 9, line 28; column 4, line 64). It would have been obvious to one of ordinary skill in the art to incorporate the glass bottle of Wu et al into the invention of Chen et al since both are directed to mango juice beverages, since Chen et al already included packaging (column 13, line 58), and since mango juice was commonly bottled in glass packages as shown by Wu et al.

Response to Arguments

8. Applicant's arguments filed September 8, 2004 have been fully considered but they are not persuasive.

Applicant argues that Chen et al do not include the process step of "centrifugal separation". However, Phrases such as "by centrifugal separation" are merely preferred methods of making the claimed product. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., turbidity) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DREW BECKER
PRIMARY EXAMINER

Drew E Becker
Primary Examiner
Art Unit 1761

1-27-05